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REMARKS

Reconsideration and allowance of the present application as amended above are respectfully requested.

Claim 1 has been amended. Claim 3 has been canceled. Upon entry of the above amendment, Claims 1-2, 4-18 remain pending and Claims 13-18 are withdrawn from consideration on their merits. No new matter is added. Claims 1-2 and 4-12 are patentable for the reasons stated below.

Claims 1 and 6-12 have been rejected under 35 USC 102(b) as allegedly being anticipated by U.S. Patent No. 5,189,814 to Barma. This contention, however, has been respectfully traversed.

Barma discloses a unified sole construction by vulcanizing various uncured rubber components. See, Col. 5, lines 46-51 and FIGS. 2 and 3. The rag filler 94 is merely placed between rubber components and, notably, is not unified with the rubber components 30 and 92 via cross linking due to vulcanization.

In stark contrast, Claim 1 recites a footwear product where the middle sole formed of a non-rubber material is unified with a bottom rubber surface of an upper portion by cross linking and is also unified with a lower rubber sole by cross linking.

Therefore, in a literal sense, the three layers in Claim 1 are

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physically unified to one another as a unibody structure. Barma fails to disclose these features of Claim 1. In addition, Claim 1 as amended further specifies that the non-rubber material of the middle sole is a polyurethane capable of being vulcanized to cross link with rubber. Barma is completely silent in teaching the use of such polyurethane.

Therefore, Barma fails to disclose several features recited in Claim 1 as amended. Under 35 USC 102(b), Claim 1 as amended is distinctly patentable over Barma. Accordingly, Claims 6-12, which are dependent on Claim 1, are also patentable over Barma based on at least the above reasons for Claim 1.

Claims 1, 2, 4 and 8 stand rejected under 35 USC 103(a) as allegedly being obvious over Aoki in view of Cheskin. This contention is also respectfully traversed.

Contrary to the contention made in the Office Action, Akoi does not teach a three-layer sole construction where the upper and bottom layers are made of rubber and the middle layer is a polyurethane. Referring to FIGS. 1, 4, 5, 6, 7, 8B and 9B, the upper sole 16 is a gas permeable material and "is made of cloth or non woven fabric" (Col. 7, lines 27-33). The Office Action contends that the rubber element 14 is the upper sole. This contradicts the disclosure of Akoi because Akoi discloses the rubber element 12 as a lower circumferential member in Col. 7, lines 53-63 and illustrated in FIGS. 1, 4, 5, 6, 7, 8B and 9B.

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The middle sole 12 is made of a sponge rubber that is "other than a polyurethane material" as stated in Col. 7, lines 10-11 and lines 36-38. Therefore, Akoi specifically teaches away from non-rubber middle sole as claimed in Claim 1 and more specifically teaches away from the recited polyurethane material in Claim 1 as amended.

Because of this specific teaching away by Akoi, Akoi and Cheskin cannot be properly combined to support the rejections under 35 103(a). For this reason alone, the rejections under 35 USC 103(a) over Akoi and Cheskin must be withdrawn.

In addition, because the upper sole 16 is a gas permeable material which is made of cloth or non woven fabric in Akoi, the upper sole 16 cannot be unified with the sponge rubber middle sole 12 via vulcanization. Therefore, Akoi teaches away from "the cross linking between the upper portion and the cross linking between the middle sole and the lower rubber sole and the middle portion are formed via a single vulcanization process" as recited in Claim 1 as amended. This further supports that Akoi and Cheskin cannot be properly combined under 35 USC 103(a) to support the rejections.

For the above reasons, Claim 1 as amended is distinctly different from and thus is patentable over Akoi and Cheskin. Accordingly, Claims 2, 4 and 8, which are dependent on Claim 1,

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are also patentable over Akoi and Cheskin based on at least the above reasons for Claim 1.

Claims 1, 2 and 6-12 stand rejected under 35 USC 103(a) as allegedly being obvious over Barma ('814) in view of Cheskin. Applicant respectfully traverses.

Under 35 USC 103(a), the Patent Office has the initial burden to make a prima facie showing of obviousness. To establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See, MPEP §2142. In the instant Office Action, no evidence has been provided to show the suggestion or motivation in the knowledge generally available to one of ordinary skill in the art. As such, we have examined the cited Barma and Cheskin for such suggestion or motivation and we concluded that cited Barma and Cheskin do not suggest the combination as contended by the Office Action.

Claim 1 recites a three-layer unibody sole structure which includes an upper portion having a bottom rubber surface, a middle sole formed of a non-rubber material that is a polyurethane capable of being vulcanized to cross link with rubber, and a lower rubber sole having a top rubber surface that is unified with said second surface of said middle sole by cross

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linking. The cross linking between the upper portion and the cross linking between the middle sole and the lower rubber sole and the middle portion are formed via a single vulcanization process. This unibody structure allows a number of benefits, including a single vulcanization process to unify all three layers of different materials together by using the vulcanizable polyurethane, lighter weight for the sole by using the vulcanizable polyurethane as the middle sole between two rubber layers to provide desired durability to the unibody sole.

The cited Barma emphasizes on the heel construction for a shoe with vulcanized rubber components. The "unitary construction" of the sole is unification of rubber soles 30 and 92 with a rag filler 94 placed in between. Hence, under the design by the cited Barma, the rag filler 94 is simply placed between the rubber layers 30 and 92 and is not physically unified with the rubber layers 30 and 92 via cross linking. Therefore, Barma fails to suggest the claimed three-layer unibody structure as claimed in Claim 1.

In addition, Barma does not specifically describe specific material for the rag filler 94, but Applicant construes the term "rag filler" to mean a filler layer made of a cloth, paper or other fabric material based on the plain meaning of the word "rag." Such rag materials usually are light weighted in

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comparison to rubber materials. As such, there is no incentive in Barma to suggest a lighter material than the rag material.

Cheskin describes rubber pieces 12, 13 and 14 over a polyurethane midsole 11 via vulcanization. Cheskin, however, is entirely silent as to nature of the layer on top of the midsole 11 and the interface between the upper side of the midsole 11 and the layer on top of the midsole 11. Therefore, taking the teachings in Barma and Cheskin as suggested in the Office Action, there is no suggestion or motivation in Barma and Cheskin for the unified body structure in Claim 1 as amended.

Lacking such suggestion and motivation, Applicant respectfully submits that the rejection to Claim 1 as amended under 35 USC 103(a) are improper and must be withdrawn. Therefore, Claim 1 as amended and its dependent claims 2 and 6-12 are patentable.

Turning now to rejections to Claim 5 under 35 USC 103(a), Applicant suggests that Ho does not fill the above-addressed defects in Barma and Cheskin. Therefore, the combined teachings as suggested by the Office Action do not support the rejections to Claim 5. Claim 5, therefore, is patentable.

In view of the above, the present claims recite novel unibody structures to allow for a single vulcanization process to unify all three layers of different materials together by using the vulcanizable polyurethane and to provide a light

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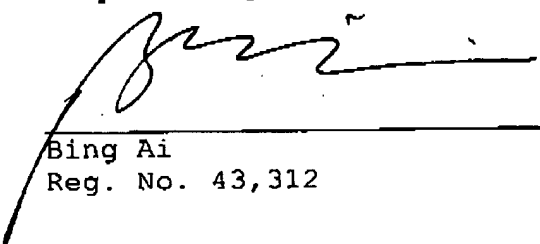
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weight construction without compromising desired durability of the sole. The cited prior art references, either individually or in combinations as suggested in the Office Action, fail to support the rejections. As such, Claims 1, 2 and 4-12 are distinctly patentable.

A response to the instant Office Action was due on October 22, 2005 which was a Saturday. Hence, this response is filed timely.

Please apply a \$510 fee for extension of time for 3 months, and any other applicable charges or credits, to Deposit Account No. 06-1050.

Respectfully submitted,

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